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THE RIGHTS OF FOREIGNERS TO RESIDE
AND HOLD LAND IN CHINA.

IT is a well-settled principle of international law that every nation has the liberty to grant to foreigners only such rights concerning real property as it may deem proper ; that, in the absence of statute or treaty regulating the subject, an alien has no absolute right to hold land. In the treaties with other nations, China has granted to the citizens of those countries residing or sojourning at the treaty ports certain well-defined rights and privileges. It has been claimed, however, by the foreign missionaries in China, that by virtue of certain provisions in existing treaties they have the right to acquire land and to establish permanent missions throughout the interior. In order to understand the nature of these claims and see upon what ground they are based, it is necessary to examine the treaties and see what concessions have been made to the citizens of foreign countries generally, and what additional rights, if any, have been granted to the missionaries.

The treaties of 1844 and 1858, between the United States and China, are acts *in pari materia*, and while the latter contains certain modifications and extensions, it is substantially a reaffirmation of the treaty of 1844. In the treaty of 1858, commonly known as the treaty of Tien-tsin, it is provided in Article XII.: "Citizens of the United States residing or sojourning at any of the ports open to foreign commerce, shall be permitted to rent houses and places of business, or hire sites on which they can themselves build houses or hospitals, churches and cemeteries. The parties interested can fix the rent by mutual and equitable agreement ; the proprietors shall not demand an exorbitant price, nor shall the local authorities interfere, unless there be some objections offered on the part of the inhabitants respecting the place." In Article XXIX. it is provided that, "Any person, whether citizen of the United States or Chinese convert, who according to these tenets shall peaceably teach and practice the principles of Christianity, shall in no case be interfered with or molested." Article VI. of the supplemental treaty of 1868 provides : "Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation ;"

while Article VII. adds: "The citizens of the United States may freely establish and maintain schools within the empire of China at those places where foreigners *are by treaty permitted to reside.*"¹

The passages quoted are the principal provisions in the treaties between the United States and China that have any direct bearing upon the subject under consideration. There is no provision whatever in these treaties granting American citizens the right to purchase land² either at the treaty ports or in the interior; nor is any right conferred upon missionaries to lease or purchase land, or to reside, in the interior.³

It has been claimed on behalf of the American missionaries⁴ that under the sixth article of the French treaty of 1860, and the twelfth article of the British treaty of 1858, the missionaries of those countries are given the right to acquire land and to reside in any of the provinces of China; and that, being entitled under the most favored nation clause to all the rights and privileges accorded to the missionaries of those countries, American missionaries also have the right to acquire land and to reside in the interior. After the occupation of Peking by the French and English in 1860, certain modifications were made in the French treaty of 1858, and among other changes was the insertion of the celebrated Article VI. In the Chinese text of the treaty the last sentence of this article reads as follows: "It is in addition permitted to French missionaries to rent and purchase land in all the provinces, and to erect buildings thereon at pleasure."⁵ The words

¹ Treaties and Conventions between the U. S. and For. Powers, pp. 162, 168, 181.

² It will be noticed that Article XII., quoted above, only gives the right to *lease* land in ports open to foreign commerce. The custom, however, has been to make the lease perpetual, and this practically serves the purpose of an estate in fee simple.

³ In the treaties of 1858 with Great Britain, France, and Russia, China has granted to the citizens of those countries the right to travel in the interior on passports, and by implication they have the right to sojourn temporarily at their convenience. Sen. Doc. 30, 36th Cong. 1st Sess. vol. x. pp. 390, 396, 412. But the privilege of sojourning a reasonable time at any place in the interior would not, by implication, create the right to purchase property and establish a permanent residence there. For. Rel. 1882, p. 140.

⁴ With the exception of the amended Berthemy convention (see *post*, p. 205) the treaties do not confer upon missionaries any greater rights than are granted to traders, travellers, or any other class of citizens; as a matter of fact, however, while merchants of all foreign nations confine their business to the open ports as prescribed by the treaties, the missionaries have extended their operations far beyond the treaty limits, have purchased land, and have built houses, churches, and hospitals throughout the empire.

⁵ For. Rel. 1885, p. 149.

quoted are not found in the French text of the article, nor is there any similar provision in any part of the French treaty. It is not definitely known how the words came to be inserted in the Chinese version. The clause in question confers no rights, however, since the treaty provides that in case of disagreement about the interpretation to be given the language, the French text must prevail.¹ Moreover, the provision has never been adopted under the favored nation clause of any foreign power, nor has France ever claimed that it constituted part of the treaty.²

Article XII. of the British treaty of 1858 provides that "British subjects, whether at the ports *or at other places*, desiring to build or open houses, warehouses, churches, hospitals, or burial grounds, shall make their agreement for the land or buildings they require, at the rates prevailing among the people equitably, and without exaction on either side."³ It seems that the phrase, "whether at the ports or other places," was inserted in the treaty by the British because of the restrictions to which foreigners had been subjected in obtaining land in Canton. The provision has been construed by the government of Great Britain to mean places near or adjoining the open ports, and hence not to give British subjects unlimited right to settle in the interior. Under this clause foreigners have been permitted to reside outside of the walls of Canton and also at the suburban cities of Taku, Woosung, Whampoa, and Sicawei.⁴ Our ministers at Peking have often been consulted by missionaries regarding the stipulations in the British and French treaties, especially the latter, and they have repeatedly stated that those conventions do not grant the missionaries any right to purchase land or to reside beyond the limits of the treaty ports. In a number of instances the Department of State has expressed its approval of the view taken by its diplomatic representatives.⁵

Having seen that our government has conceded that these treaties confer no legal rights on American citizens to secure property beyond the open ports, we naturally inquire what has been the attitude of the Chinese government regarding the rights of missionaries in the interior. The policy of the imperial government,

¹ For. Rel. 1875, p. 335; For. Rel. 1886, p. 96; For. Rel. 1888, p. 271.

² For. Rel. 1888, p. 271.

³ Sen. Doc. 30, 36th Cong. 1st Sess. vol. x. p. 413.

⁴ For. Rel. 1881, pp. 284, 290.

⁵ For. Rel. 1873, part 1, p. 119; For. Rel. 1875, part 1, pp. 334, 398; For. Rel. 1881, p. 290; For. Rel. 1882, pp. 137, 140; For. Rel. 1886, p. 96; For. Rel. 1887, p. 161; For. Rel. 1888, pp. 220, 238, 266, 270, 301; For. Rel. 1893, p. 234.

so far as it can be ascertained from the discussion of cases that have arisen from time to time, is to interpose no objection to the acquisition of property by the missionaries, provided no objection is raised by the local authorities or the inhabitants of the locality concerned.¹

The custom has been for the local governments to apply the same rules, regarding the acquisition of land in the interior, as obtain at the treaty ports. While the treaties recognize the right of the local authorities, in some instances, to restrict the acquisition of property, our government will not permit unreasonable objections to be raised or improper regulations to be insisted upon.²

¹ A recent case bears directly upon this point. In 1893 the missionaries at Nanking desired to have the privilege of residing during the summer months at the hills adjacent to the city. They constructed huts, and with the consent of the owners of the land prepared to live there; but the viceroy, hearing of the intention, refused his assent, claiming that outside the city their lives would be in danger and that they would be beyond the reach of his protection. The Tsung-li Yamen, in a communication to the United States minister sustained the viceroy in the position taken by him, and quoted with approval a letter written by him to the Yamen which read as follows:—

“As China has authorized the building of churches and the propagation of Christianity *in the interior*, there would seem to be no reason in prohibiting to missionaries the simple privilege of resorting to certain places to escape the heat. The real reason, therefore, is to be found in the fact that the conditions are not the same within and without the capital. The mountain to which the missionaries wish to resort is desolate and retired, and few people live there. Since the building of churches at Nanking to the present time missionaries have never repaired to the mountains during the summer, and there is no provision in the treaties authorizing them to do so. Throughout the Yangtzu Valley the popular mind is in an unsettled condition. Between the populace and the missionaries exists a great antipathy. Even within the cities where churches are protected by the magistrates, the suspicions of the people sometimes lead to trouble. If at some remote locality in the hills, the local officials would with difficulty learn of such troubles and would more than ever be unable to afford protection. . . . Now it is to be remarked that the missionaries in this case live in a locality in the northern part of Nanking which is half city, half suburb. It is quiet and pleasant to live in, not crowded and confused, and free from turmoil. Why should they under these circumstances search for other summer residences in the hills, causing endless trouble?” For. Rel. 1894, pp. 141, 143.

² It will be seen by referring to Article XII., quoted above, that the local authorities shall not interfere in a sale of land “unless there be some objection offered on the part of the inhabitants respecting the place.” In 1853 (there is a similar provision in Article XVII. of the treaty of 1844) the Chinese officials insisted that the objection of a single person in the community would prevent the local authorities from determining the site for a building; but our government protested against so narrow an interpretation of the treaty. House Doc. 123, 33d Cong. 1st Sess. p. 78. In 1893 the Chinese authorities at Nanking, in a communication to the United States consul, stated:—

“Henceforth when missionaries or other citizens of the United States desire to

Experience has shown, however, that the religious and local prejudices of the inhabitants must always be taken into consideration in determining whether the objections of the local authorities are reasonable. One of the greatest obstacles met with in acquiring property in China is the superstition regarding geomantic influences, one of the oldest and most potent of all Chinese superstitions; it has frequently happened that riots have been brought about because of the alleged interference with the feng shui.

There seems to be a universal custom for the missionaries in the interior to take the legal title of the land in the name of a Chinese convert, who holds the property in trust for the missionary society. There is apparently a general belief that this method of acquiring and holding property does not offend the treaty stipulations, and that it is therefore valid. In 1888 our minister, on being consulted by a missionary regarding the force and effect of such a conveyance, replied: "The subject of trusts is one of the most difficult. In China it seems to be usual with foreigners, in the interior at least, to have property conveyed to a trustee who executes, as a precaution, a declaration of trust to the *cestui que trust*, which is not recorded. The plan is probably legal. But the better plan would, in my opinion, be to have the deed made to the head of the mission in trust for his society, or to the society direct."¹ The law of real property being governed by the *lex loci rei sitæ*, our equitable doctrine of trusts can have no application whatever in the empire of China; moreover, a trust created for the purpose of evading a rule of law would be clearly illegal and void even in this country. There can be no valid objection, however, to a Chinese missionary acquiring and holding land in his own name, even though the local officials and the inhabitants object to his presence.²

acquire land or houses, no matter where, they must first meet the gentry and elders of the place, and agree with them, and then report to the bureau of local officials for an official survey of the ground."

The effect of this rule would have been to make the acquisition of land very difficult, if not absolutely impossible. Our minister directed the consul to inform the Taotai that the restrictions which they desired to impose were so directly in conflict with Article XII. of the Tien-tsin treaty that it would not be acquiesced in or acted upon by the legation. For. Rel. 1893, p. 230. It is interesting to note, in connection with this case, that Nanking is not an open port. Our government has also insisted that when the owner is willing to sell and the local authorities consent to the transfer, then the conveyance should be made regardless of the opposition of a few of the gentry. For. Rel. 1889, p. 73.

¹ For. Rel. 1888, p. 274.

² In 1881 a Chinese teacher was sent by the American missionaries to the city of

While, therefore, the treaties mentioned confer no right to acquire land in China, it nevertheless appears that, without objection on the part of the Chinese government, in practice missionaries purchase or lease property, either in their own names or in the name of a convert, in the interior as well as in the treaty ports. We now come to the question of indemnity where the foreigner, after having been permitted to purchase property in the interior, has been expelled by mobs and his property destroyed. The policy of the government of the United States in such cases may be briefly stated as follows: While the government has never advanced the claim that its citizens have any right to reside beyond the treaty ports, yet whenever American missionaries have located in the interior and have acquired property with the consent and acquiescence of the local officials and the inhabitants, our government has insisted that they shall not be deprived of their property without due process of law and just compensation. To illustrate the treatment of this class of cases and the result reached, two instances of recent date are in point.

The American Methodist mission was established in 1882, and property was purchased in the city of Chungking the next year. In 1886 additional property for a hospital, a school, and residence was purchased with the full knowledge and consent of the people and the local authorities. The deeds were sealed by the magistrate, and proclamations were issued stating that the mission intended to build. While the buildings were being erected the magistrate requested that the work should temporarily cease on account of the presence of a large body of military students caused by the military examinations. The property was turned over to the magistrate with the understanding that he was to be responsible for its protection. Inflammatory placards were posted by the students calling on the people to destroy the buildings, and two days later all the missionary property in Chungking was destroyed. A fine Catholic cathedral, just completed, and extensive foreign residences were consigned to the flames. The missionaries and families escaped from the buildings, and after some difficulty reached the Yamen, where they were given protection. After the

Nan-Chang-fu, the capital of the province of Kiangsi. He leased premises just outside the city gates and began work. The inhabitants soon raised objections to his presence, and, after trying in vain to persuade him to leave, they finally put his furniture in a boat and sent him with it down the river. The incident was made the subject of a diplomatic remonstrance, our minister referring the foreign office to Article XXIX. of the treaty of Tien-tsin. For. Rel. 1881, p. 308.

immediate danger had passed, they were escorted to boats and allowed to leave the city. It clearly appeared from the evidence that the local officials took no precautions whatever to check the impending riot, and during its progress, for two days, nothing was done to quell it. It was only when the destruction of the city seemed imminent that any efforts were made to resist the acts of the mob. The United States demanded a large indemnity, which was paid by the Chinese government. The missionaries were permitted to return to Chungking, and under the protection of the authorities, to rebuild, where it was deemed advisable; but in those localities where the opposition of the inhabitants was very great, the sites were exchanged for others.¹

In 1887 the Presbyterian mission sought the aid of the local officials at Chi-nan-fu in securing ground for a hospital. The governor, to whom the matter was referred by the Taotai, replied that the officials could neither purchase property for the missionaries nor compel the people to sell, but if both parties mutually agreed to a transfer, the conveyance could be completed, and if any opposition arose, it would be suppressed. The missionaries took a perpetual lease of a piece of property and took the deed to the magistrate to be stamped, but he declined to seal it until the property was vacated. Some time later the literati and gentry, headed by a former governor of the province, presented a petition objecting to the lease as a violation of the treaty, and because it would interfere with the geomantic influence. After several interviews with the officials, the missionaries at their request agreed to wait thirty days to allow the officials to procure satisfactory property in exchange for the piece selected. But no offer of exchange was ever made. The landlord's family having agreed that the missionaries might take possession of the property, they notified the Taotai that the time having expired, one of them would go that evening and take charge of it, and a request was made that the magistrate be ordered to protect the occupant. In the evening a missionary went to the property, and in a short time a mob gathered about the premises. He was forcibly ejected from the house and severely injured by being stoned and otherwise maltreated. In an interview with the Taotai the missionaries were informed that the opposition was so great that it was impossible to suppress it, and that all they could do would be to accept back again their money which awaited them in the magistrate's Yamen. Our minister, in

¹ For. Rel. 1887, pp. 159, 160, 163, 165, 166, 169, 176, 179, 180, 189, 207.

a communication to the Tsung-li Yamen, demanded that the possession of the leased property be accorded to the missionaries and protection in its occupancy be assured them; but that if it was more desirable to make an exchange of property, then a suitable and satisfactory tract of land should be tendered to them. The missionaries were willing for an exchange of property, but the Chinese officials excused themselves by saying that they could find no land for sale. But as it appeared that large sums of money were extorted from the landlord who leased the property to the missionaries, that he was repeatedly beaten, stoned, and imprisoned, and that when taken out of prison two years later he soon died as a result of the inhuman treatment to which he was subjected, it is not at all surprising that there was no land for sale. The American minister, in a communication to the Tsung-li Yamen, stated that there would be no difficulty in purchasing land in the suburbs; that it was only necessary that a guaranty be given of protection, and that there would be no maltreatment or imprisonment of a vendor. The imperial officers replied that the Yamen would address the provincial authorities and direct them to render assistance in devising a plan of action, but that if property could not be acquired at once the missionaries would have to be patient, "and wait and not show a hasty temper." Diplomatic correspondence on this subject continued for several years; it would only be repetition to discuss this matter in detail. The imperial and provincial authorities seemed willing that the missionaries should be granted other property, but it was impossible to overcome the opposition of the inhabitants. In 1891 our minister's patient and persistent efforts were at last rewarded, the mission being granted another site within the city limits; it was, however, expressly stipulated that, in order to preserve the geomantic influence, no ditch should be dug out, and that no high storied buildings should be erected.¹

It is important to notice in this connection that in neither of the two preceding cases was there any objection interposed by the government of China to the demands of our government on the ground that the missionaries had exceeded their rights under the treaties.² Not only has China failed to insist that the mission-

¹ For. Rel. 1888, pp. 238, 243, 266, 292, 309, 325, 349; For. Rel. 1899, pp. 72, 74, 108; For. Rel. 1890, pp. 155, 158, 160, 179, 192, 197, 206, 208; For. Rel. 1891, pp. 353, 431, 434, 451, 454; For. Rel. 1892, pp. 70, 71, 73, 89, 118.

² With the exception of the statement of the Tsung-li Yamen that there was no provision in the treaties authorizing the missionaries at Nanking to go to the moun-

aries confine their actions within the rights granted by the treaties, but the enormous and often exorbitant and unreasonable indemnities demanded by the United States for injuries done to American missionaries in the interior have invariably been paid without any question being raised as to the liability of the imperial government. Thus in 1873 the Rev. Corbett, an American missionary in Chi-mi, a city located in the interior, 130 miles from any treaty port, leased property for a residence and began work. A short time after his arrival he "began to feel the effects of the native opposition, being twice stoned and hooted out of the neighboring villages." He was finally compelled to flee to the nearest treaty port for protection. After he had gone, some one entered and sacked his house. The American minister demanded that the imperial government take action in the matter, and the nearest consul made a complaint to the local authorities; but no satisfactory progress having been made toward a settlement our minister directed the consul to go in person to the port of Chefoo "to bring the affair to a conclusion according to the obligation of the treaty and justice." An American naval vessel was sent to Chefoo, where it remained until the affair was satisfactorily settled. Twenty-eight of the rioters were arrested and with a number of witnesses taken from the scene of the disturbance at Chi-mi to Chefoo, a distance of 140 miles, where the trial took place. Four of the rioters who had been prominently engaged in the stone throwing were severely punished, while the local constables, in addition to suffering severe corporal punishment, were dismissed from office. All of the prisoners were obliged to enter into a bond to keep the peace, and to guarantee Mr. Corbett personal safety while he remained at Chi-mi. The Taotai issued a proclamation threatening severe punishment for similar attacks in the future. Mr. Corbett was indemnified for his pecuniary loss, was given a special passport, and also a letter to the Chi-mi magistrate.¹

One cannot but compare the justice insisted upon by our government in this case with the position taken by our own government when asked for indemnity in such cases. It will be

tains during the summer, the writer has been unable to find a single instance where the imperial government has ever objected to the presence of the missionaries in the interior, or even alluded to their rights under the treaties. As we have already seen, the objections in the Nanking case were based on the reasonable ground that it was impossible to afford the missionaries any protection if they resided in the mountains; but for the antipathy of the inhabitants the question would probably not have been raised.

¹ For. Rel. 1874, pp. 274, 297, 345.

remembered that in September, 1885, a riot occurred at Rock Springs, Wyoming, and twenty-eight Chinamen were killed and many more severely injured. It appeared that the Chinese miners refused to join with the other miners in one of their "strikes," and while quietly at work one morning, they were suddenly attacked by an armed mob. They were ordered to leave the neighborhood, but before they had an opportunity to obey the mob opened fire upon them. All who were able fled to the mountains without offering any resistance. Many were murdered in their homes, and others were shot down while endeavoring to escape. The rioting continued all day without any effort being made by the local authorities to suppress it. During the entire night the reports of rifles and revolvers could be heard, while the surrounding hills were lit with the glare of the burning Chinese village. It is not necessary to review the sickening details of the massacre; the history of civilized nations does not present a more shocking example of brutal cruelty and inhumanity. The proceedings before the grand jury were described as a "burlesque." Although nearly all the murderers were known, the jury failed to find any bill of indictment. Regarding the coroner's proceedings the Chinese minister stated: "The conduct of the coroner who investigated the causes of death seems to be strange, but with my imperfect knowledge of American procedure I prefer not to criticise it." Minister Cheng Tsao Ju, in a note to the Department of State, demanded that the guilty parties be brought to punishment; that the Chinese subjects be indemnified for all losses and injuries sustained; and that proper measures be taken to prevent similar attacks. Secretary Bayard in reply advanced the well-known argument which has often been put forward by our Secretaries of State; that is, that under our Constitution the federal government cannot interfere with the administration or execution of the local laws of a state or territory; that the territorial courts were open, "with every aid they can devise, to secure publicity and impartiality in the administration of justice to every human being found within their jurisdiction." He then went on to say:—

"Yet I am frank to state that the circumstances of the case now under consideration contain features which I am disposed to believe may induce the President to recommend to the Congress, *not as under obligation of treaty or principle of international law*, but solely from a sentiment of generosity and pity to an innocent and unfortunate body of men, subjects of a friendly power, who, being peaceably employed within our jurisdiction, were so shockingly outraged; that in view of the gross and shameful

failure of the authorities at Rock Springs, in Wyoming Territory, to keep the peace, or even attempt to keep the peace, or to make proper effort to uphold the law, or punish the criminals, or make compensation for the loss of property pillaged or destroyed, it may reasonably be a subject for the benevolent consideration of Congress."

In endeavoring to express his sympathy for the unfortunate families he names the very elements which, according to well-recognized principles of international law, make a nation liable for mob violence. The learned Chinese diplomat observed that if the view taken by our Secretaries of State as to the liability of the United States for mob violence should be insisted upon and adhered to by our government, then "China should, in due reciprocity and international comity, accept and practice the same principle."¹

¹ For. Rel. 1886, pp. 101-168. In 1858 the government of the United States and China agreed upon a convention which provided for an adjustment of all claims of American citizens against China. Under an act of Congress two citizens of the United States were appointed to adjust the claims and award such sums as they might deem proper. The Chinese government requested that a Chinese be placed on the Claims Commission; but this proposition was rejected, and no opportunity was afforded the government of China to examine the evidence upon which the claims were based. It may be interesting in this connection to notice the nature of some of the claims that were allowed, not that they bear directly upon the question of liability for injuries committed in the interior, but because they illustrate how far our government has followed the "principles of international law and the usages of national comity."

Our government has always maintained that according to well-settled rules of international law, it is not liable to either foreign governments or individuals for damages resulting from the war operations of either its own troops or of foreign nations; and other nations have invariably followed this rule. But the American Commission allowed forty-one out of forty-eight claims for damages sustained by American citizens resulting from the bombardment of Canton by the British in 1856 and 1857, China paying \$397,618.17 as "war damages." For. Rel. 1886, p. 145. In 1841 an American citizen was arrested by Chinese soldiers, during the war between Great Britain and China, under the mistaken belief that he was a British subject. He was thrown into prison and cruelly treated; but when it was discovered that he was an American citizen he was immediately released, with an apology from the Chinese authorities. He was imprisoned less than a day, but the claim of \$31,600 was allowed by the Commission. For. Rel. 1886, p. 146. Another interesting case was the "Caldera" claim. The Caldera was a Chilean vessel, but the claim was made by New York underwriters. It appeared that the vessel encountered a severe typhoon on the first day out from Hong-Kong, and being badly damaged, she sought shelter in a bay. It was only with difficulty that the vessel could be kept from sinking. While the crew were engaged at the pumps they were attacked and overpowered by Chinese pirates who carried away a large part of the cargo. The vessel proved a total loss. It is expressly stipulated in the treaties of 1844 and 1858, that the Chinese government will not make indemnity for American vessels wrecked or plundered by pirates. Piracy was one of the risks against which the claimants insured; it would have been as reasonable to have demanded an indemnity for the damage caused by the typhoon. The Commis-

Whether the Chinese government could have successfully maintained that it was not liable for injuries done to property acquired in excess of treaty rights is, perhaps, an arguable question; but it may be safely said that, under similar circumstances, no Western nation would ever have failed to avail itself of this defence.¹ Had the question of liability been raised it would seem, however, that the imperial government, by sanctioning the acts of the local officials, would be precluded from maintaining that the local authorities exceeded their powers and that the sale was invalid. It must of course be conceded that the unauthorized acts of the local authorities could not bind the imperial government, any more than our municipal officials could bind the federal government by granting rights in excess of existing treaties. But the relation between the national and the local government in China is very different from what it is in this country; in China the local officials are directly under the control of the imperial government, and the subordinate officers may be regarded, in a general way, as the official agents of the national government. The instances are numerous where the local and provincial officers have been subjected to severe corporal punishment by the imperial government for injuries done to American citizens.² The fact that for more than forty years there has been a universal custom of selling lands to foreign-

sion allowed \$54,566.14. Sometime later the claimants demanded of Minister Burlingame the further sum of \$68,078.67. Mr. Burlingame stated that it was his opinion that "they were not entitled to one farthing. . . . After this award to learn that a still further claim should be put forward fills me with amazement." For. Rel. 1886, p. 146; For. Rel. 1865, part 2, p. 408. In discussing these claims Minister Cheng Tsao stated: "It results that the total amount received by claimants out of the indemnity fund paid to the United States by China, by virtue of the Claims Convention of 1858, was \$643,994.42; of which amount it is believed that at least \$600,000 was not warranted under a strict application of international law, as interpreted by the government of the United States, but was conceded by China as a mark of appreciation of the friendly attitude of the United States during the hostilities with Great Britain and France." For. Rel. 1886, p. 147.

¹ Apropos of this question of liability, Minister Low, in discussing the rights of missionaries, stated:—

"There is no authority under the treaties for citizens of the United States to purchase land outside the limits of the treaty ports. If property be purchased and buildings erected thereon, and they should be damaged or destroyed by mob or other violence of the Chinese, the claim for damages would be an equitable rather than a legal one; and if the local or the imperial authorities should refuse to respond, upon the ground that the property was purchased in violation of treaty rights, it is extremely doubtful if our government would sanction any proceedings which might be instituted by its diplomatic or consular officers to collect it." For. Rel. 1873, p. 339.

² For. Rel. 1881, pp. 266, 268; For. Rel. 1891, p. 73; For. Rel. 1895, pp. 103, 151, 157, 162; For. Rel. 1897, p. 68.

ers with the tacit acquiescence of the imperial government tends to prove that the acts of the local officials were authorized by the national government; in fact, the imperial government has repeatedly directed the provincial authorities to aid the missionaries in procuring land, and also commanded that proper protection be given them.¹

It has been suggested by one of our ministers that the attitude of the Chinese government has been such that it may be considered as equivalent to an actual recognition of the right to reside in the interior.² It is extremely doubtful if this proposition can be maintained. The fact that China has granted to foreigners greater rights than they are entitled to under the treaties does not in itself create a positive right to continue to acquire rights other than those granted by treaty. There are instances where nations have not insisted on the fulfilment of treaty obligations, and even after the elapse of a long period of time, they have changed their policy and successfully enforced their rights under the treaties. It is clear, however, that a foreigner may, with the permission of the government, acquire privileges not authorized by treaties, and the government would be estopped from saying that he acted in violation of his legal rights, or from depriving him of rights thus obtained. But that would be no ground for asserting the claim that other foreigners are entitled to acquire similar rights; for while a government may grant to certain individuals such rights as it may see fit to concede, it does not necessarily follow that a right to acquire such rights is thereby created in favor of the whole world. Where there is a general custom of granting certain privileges to the citizens of a particular nation, other countries may rightfully claim that, under the most favored nation clause, they are entitled to the same rights; but that is, of course, an entirely different proposition.

The right of extra-territorial jurisdiction as exercised by foreign nations in China is an element which has greatly affected the right to reside in the interior. For the fact that foreigners are amenable only to the consular tribunals of their own country makes it necessary to restrict their residence to the open ports where consuls are stationed. Our citizens in China are not noted for their fair dealing with the Chinese, and our consular tribunals do not always ren-

¹ For. Rel. 1881, p. 271; For. Rel. 1887, p. 164; For. Rel. 1888, pp. 294, 295; For. Rel. 1895, p. 162.

² For. Rel. 1882, p. 141.

der decisions with perfect impartiality;¹ it is therefore not at all surprising that China should object to an extension of the system throughout the empire.

But the reasons for restricting other foreign classes to the open ports do not apply with equal effect to the missionaries. And it is perhaps because the principles of the Christian religion are recognized by the Chinese government, "as teaching men to do good, and to do to others as they would have others do to them," that the missionaries have not only been permitted to exceed the limitations prescribed by the treaties, but they have also been granted, in recent years, new treaty rights not accorded to any other class of foreigners. In an amendment to the French treaty in 1895 the French missionaries were granted certain important rights and privileges in the interior. Under the most favored nation clause our missionaries are, of course, entitled to the same rights and privileges. It has been the custom of our government to insert in its official publications copies of all treaties between China and other nations; but, strangely enough, the amended Berthemy convention has never been published. The writer recently applied to the Department of State for a copy of this treaty. In reply the Department stated that there was no copy of the treaty in Washington; that in accordance with instructions from the government the American Ambassador in Paris had consulted M. Delcassé, Minister of Foreign Affairs, regarding the treaty, but that because of reasons based on policy the French government had declined to publish it. Being unable to procure a copy of the treaty, the Department sent a copy of a document which appears in the official publications of the French diplomatic correspondence. This docu-

¹ The Hon. C. W. Bradley, LL. D., in one of his decisions used the following language: "It is a mortifying fact that were a balance to be struck between the aggregate losses suffered by Americans from Chinese pirates, Chinese thieves, and debtors, on the one hand, and on the other, the injuries inflicted on Chinese merchants, tradesmen, compradors, and citizens in the non-payment of debts honestly due them by American merchants, agents, shipmasters, mariners, etc., we should find that balance to our debt in a ratio of full 90 per cent. I speak advisedly. On the score, too, of official fidelity and punctuality in fairly carrying out their treaty obligations as against their own countrymen, I apprehend that the consular officers of America and Europe have been guilty of as many and as serious laches as can be produced against the native magistracy of China in their official shortcomings toward foreigners. Such, at least, is the result of my observation. Due provision is also made by the Chinese code of statutes and ordinances for the punishment of malfeasance on the part of officers. . . . These statutes cover the whole ground of official torts, and are frequently enforced with exemplary impartiality and vigor." H. Ex. Doc. 29, 40th Cong 3d Sess. p. 176.

ment, which is an official communication to the French government from its diplomatic representative in Peking, explains something concerning the nature and substance of the amended treaty.¹ By virtue of the amendment the French missionaries are given the right to purchase land and reside anywhere in the interior. The convention provides that the deeds taken by the missionaries shall be in the name of the missionary society or church which buys the land. (For. Rel. 1897, p. 62.) It seems that until very recently there was in force in certain parts of the empire a regulation which had the effect of adding a new clause to the treaty. It required every Chinaman, before selling any property to the missionaries, to obtain from the local authorities permission to make the sale. The French Legation protested against the regulation, and the Tsung-li Yamen caused a proclamation to be issued which stated that the vendor shall neither be obliged to inform "the local authorities of his intention to sell, nor to ask their authorization in advance." According to the terms of the official letter quoted in the note below¹ it would seem that the additional rights granted by the amended treaty are restricted to the Catholic missionaries exclusively; but whether that is true or not, it does not appear that the Chinese government has, as a matter of practice, ever made any distinction between Catholics and Protestants.

¹ M. GERARD, MINISTRE DE LA REPUBLIQUE FRANÇAISE À PEKIN, À M. HANOTAUX, MINISTRE DES AFFAIRES ÉTRANGÈRES.

PEKIN, le 30 avril 1895.

J'ai reçu la dépêche par laquelle Votre Excellence a bien voulu répondre à la suggestion que je lui avais soumise concernant l'opportunité de donner à la Convention conclue le 20 février 1895 entre M. Berthemy et le Tsong-ly-Yamen, une consécration et une autorité nouvelles. Cette Convention, que concerne l'acquisition à titre collectif, par les missions, de terrains et de maisons dans l'intérieur du pays, se recommandait à notre attention, d'abord, parce que la plupart des affaires récentes sont des contestations en matière d'acquisition d'immeubles, ensuite parce que la dite convention semble n'avoir été portée à la connaissance des Vice-Rois qu'avec des additions et commentaires qui en dénaturent le sens.

Un règlement adressé en 1865 aux Vice-Rois par le Surintendant du commerce des ports du Nord a, en effet, ajouté à cette Convention une clause aux termes de laquelle tout Chinois doit, avant de vendre aucune propriété aux missionnaires, demander aux autorités locales une autorisation préalable, qui, en fait, est d'ordinaire refusée. La Légation a souvent protesté contre ce règlement; le Tsong-ly-Yamen a admis le bien-fondé de ses réclamations, notamment dans des lettres du 5 février 1882 et du 31 août 1888, dont j'ai donné lecture aux Ministres. Et cependant la Convention, dans la plupart des cas, n'est pas observée, ou plutôt les autorités locales continuent à y adjoindre l'obligation de l'autorisation préalable, qui en est comme l'abrogation.

J'ai eu la satisfaction d'annoncer il y a quelque temps à Votre Excellence que mes efforts avaient abouti, et qu'après une série de pourparlers et un échange de dépêches

In 1897 Minister Denby, in a communication to the Tsung-li Yamen, demanded that an imperial decree be issued recognizing the right of American missionaries to acquire land and reside in the interior. The Yamen replied that the right to reside in the

qui s'étendent du 27 juillet au 3 décembre, j'avais réussi à obtenir du Tsong-ly-Yamen le rétablissement intégral et l'envoi aux autorités provinciales de l'Empire du texte authentique réglant le droit d'achat, par les missions catholiques, de terrains et de maisons dans l'intérieur de la Chine.

J'ai l'honneur d'adresser aujourd'hui à Votre Excellence le texte des instructions envoyées, sur ce sujet, par le Gouvernement Imperial aux autorités intéressées, et qui sont de nature à nous donner entière satisfaction.

A. Gérard.

Annexé à la dépêche du Ministre de la République à Pékin, en date du 50 avril 1895 : —

LE TSONG-LY-YAMEN AUX VICE-ROIS ET GOUVERNEURS DE TOUTES LES PROVINCES.

Lettre Officielle.

Déjà, pendant la 9^e lune de l'année dernière (octobre 1894), notre Yamen a, relativement à la question des achats de terrains faits par les missions religieuses dans l'intérieur du pays, adressé dans toutes les provinces, ainsi que le constatent les archives, le texte du règlement conclu, pendant la 4^e année T'ong-tché (1885), par le Ministre de France, s. Exc. M. Berthemy, avec notre Yamen.

S. Exc. M. Gérard, Ministre de France, vient maintenant de nous adresser une communication officielle dans laquelle il nous dit que les autorités locales de certaines provinces telles que le Hou-Kouang, le Tche-li, la Mongolie et la Mandchourie, déclarent n'avoir pas encore reçu d'ordres quant à la façon dont le règlement primitif de M. Berthemy doit être appliqué et qu'il y a aussi d'autres provinces où on continue d'obliger les personnes vendant leurs terrains à en donner préalablement avis aux autorités locales en demandant leurs instructions. Des ordres donnés par apostille du Gouverneur du Kiang-si, une proclamation des autorités provinciales, Sse et Tac, de Sse-tch'ouan, et une proclamation du tao-tai de Leitcheou et Kiong-tcheou, dans le Kouang-tong, ont été envoyés en copie à notre examen (par le Ministre de France), en nous priant d'expédier de nouveau des instructions circulaires dans toutes les provinces, partant que :

“A l'avenir, si des missionnaires français vont acheter des terrains et des maisons dans l'intérieur du pays, le vendeur (tel qu'il est, son mon) devra spécifier, dans la rédaction de l'acte de vente, que sa propriété a été vendue pour faire partie des biens collectifs de la mission catholique de la localité. Il sera inutile d'y inscrire les noms du missionnaire ou des chrétiens. La mission catholique, après la conclusion de l'acte, acquittera la taxe d'enregistrement fixée par la loi chinoise pour tous les actes de vente, et au même taux. Le vendeur n'aura ni à aviser les autorités locales de son intention de vendre ni à demander au préalable leur autorisation.” De cette façon, le règlement conclu entre les deux nations, est-il ajouté, pourra recevoir son application.

Ayant reçu cette communication, nous croyons devoir adresser la présente lettre officielle à tous les Vice-Rois et Gouverneurs des provinces pour qu'ils en prennent connaissance, agissent en conséquence et prescrivent aux autorités locales de s'y conformer uniformément, sans qu'il y ait lieu de s'en tenir à ce qui a été dit précédemment sur l'avis préalable à donner aux dites autorités locales, ce qui provoquerait des discussions. Ceci est très important. Archives Diplomatiques, vol. lvi. p. 305.

interior was provided for by treaty, and that imperial decrees had already been issued commanding that the protection should be given to United States citizens residing in China. As to the right to purchase land in the interior the Yamen stated that "while the treaties between the United States and China do not provide for this, still the American missionaries should be treated in this matter the same as the French missionaries."¹

The amended Berthemy convention is an official recognition of the right to establish permanent missions in the interior; but the rights now recognized are only those which for some time the missionaries have enjoyed in practice. The stipulations in the treaties regarding the objection of the local authorities and the inhabitants must still be observed, and in order to avoid the ever-recurring riots, it is necessary that the local prejudices and superstitions of the inhabitants should not be disregarded. Whether the privileges granted to missionaries will ever be extended to other classes of foreigners is one of the problems to be solved in the future. In 1886 our minister stated in a communication to the Department of State:²—

"No manufacturer or merchant would be allowed to settle in Kalgan or other points in the interior where there are flourishing missionary stations. If any distinction, therefore, between missionaries and other classes of citizens were possible under the laws and constitution of the United States the vexed question of residence in the interior might be solved."

While it is true that our consular courts in China administer the laws of the United States, it is not true that our constitution does in any way affect the "vexed question of residence in the interior." It is a well-settled principle of constitutional law that our citizens cannot invoke the protection of the constitution outside the territorial boundaries of the United States.³ If China sees fit to grant to missionaries rights not accorded to any other class of citizens we have no right to complain. Our constitution does not follow the Chinese flag.

Louis Napier Richards.

RICHARDS, ILL., June 20, 1901.

¹ For. Rel. 1897, p. 62.

² For. Rel. 1886, p. 98.

³ *In re Ross*, 140 U. S. 453.